

ORIGINAL



0000012919

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

250p

COMMISSIONERS

2004 NOV -2 P 3:01

Arizona Corporation Commission

DOCKETED

NOV - 2 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKETED BY

CAR

IN THE MATTER OF:

DOCKET NO. S-03464A-03-0000

MUTUAL BENEFITS CORPORATION,

Respondents.

NINTH
PROCEDURAL ORDER

BY THE COMMISSION:

On April 30, 2003, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Mutual Benefits Corporation ("MBC" or "Respondent"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of life and viatical settlements ("viaticals") and/or investment contracts.

The Respondent was duly served with a copy of the Notice.

On May 13, 2003, a request for hearing was filed for MBC.

On May 15, 2003, by Procedural Order, a pre-hearing conference was scheduled.

On May 28, 2003, Respondent filed a Motion to Dismiss, or in the Alternative, Motion for More Definite Statement ("Motion to Dismiss or More Definite Statement").

On June 4, 2003, Respondent filed a Motion to Quash Subpoena ("Motion to Quash") of third party, Ms. Debbie Bugliera. The subpoena issued to Ms. Bugliera was issued on May 6, 2003 after the Notice herein was issued. The subpoena references this proceeding on its face and a copy was not served on the Respondent. Subsequently, Ms. Bugliera did not appear in response to the Division's subpoena to give testimony under oath and Respondent filed the Motion to Quash herein.

On June 5, 2003, the Division and the Respondent appeared by counsel to address issues raised in the proceeding. The parties agreed that a second pre-hearing conference should be scheduled in early August, 2003 after some initial discovery had taken place in order that a hearing could be scheduled once the approximate number of witnesses was determined and whether certain

1 matters could be resolved by stipulation. By Procedural Order, a pre-hearing conference was
2 scheduled on August 5, 2003.

3 On June 9, 2003, the Division filed its Response to the Motion to Dismiss or More Definite
4 Statement.

5 On June 17, 2003, the Division filed its Response in opposition to the Respondent's Motion to
6 Quash. While presenting a number of legal arguments against the Motion to Quash, the Division
7 acknowledged that "Pre-hearing discovery in agency proceedings is a matter of agency discretion."

8 On June 20, 2003, Respondent filed its Reply to the Division's Response to the Motion to
9 Dismiss or More Definite Statement.

10 On June 24, 2003, the Respondent filed its Reply to the Division's Response essentially
11 restating its earlier arguments that the Arizona Rules of Civil Procedure ("ARCP") should apply as
12 stated by Commission rule, A.A.C. R14-3-109(P).

13 On June 27, 2003, by Procedural Order, the Motion to Quash was not granted, but
14 Respondent's counsel was granted an opportunity to participate as set forth in the ARCP if the
15 subpoena is reinstated.

16 On July 3, 2003, by Procedural Order, the Commission denied Respondent's Motion for More
17 Definite Statement and took under advisement MBC's Motion to Dismiss.

18 On August 5, 2003, a pre-hearing conference was held with the Respondent and the Division
19 appearing through counsel. The parties agreed that more time for discovery was needed and further
20 agreed to a status conference on September 23, 2003, which was subsequently ordered by Procedural
21 Order.

22 On September 23, 2003, at the status conference, the scheduling of the proceeding was
23 discussed and the respective counsel agreed that the proceeding should be scheduled during April
24 2004, and estimated the time required for hearing will be between three and four weeks.

25 On October 29, 2003, by Procedural Order, a hearing on the Notice was scheduled to
26 commence on April 7, 2004.

27 On February 19, 2004, the Division and MBC filed a Joint Request to Continue the
28 proceeding until November 15, 2004. Subsequently, during a teleconference, the parties agreed that

1 the proceeding commence on October 25, 2004.

2 On March 4, 2004, by Procedural Order, the hearing was scheduled to commence on October
3 25, 2004.

4 On August 25, 2004, the parties filed a joint stipulation to continue the proceeding along with
5 the filing and exchange of witness lists and exhibits. The parties further requested that a pre-hearing
6 conference be scheduled on November 2, 2004.

7 On August 26, 2004, by Procedural Order, a pre-hearing was scheduled for November 2,
8 2004, and the exchange of witness lists and copies of exhibits was delayed.

9 On November 2, 2004, the Division and Respondent appeared through counsel. The
10 respective counsel agreed that, due to ongoing federal litigation involving Respondent's status in a
11 receivership proceeding in Florida, the Commission's action should be stayed indefinitely. The
12 Division agreed to file a motion if it is appropriate to resume the proceeding.

13 Accordingly, the proceeding should be continued indefinitely and the Division should file a
14 motion to resume the proceeding if appropriate.

15 IT IS THEREFORE ORDERED that the proceeding shall be continued indefinitely.

16 IT IS FURTHER ORDERED that counsel for the Division shall file a motion to resume the
17 proceeding if appropriate.

18 DATED this 2nd day of November, 2004.

19
20 
21 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

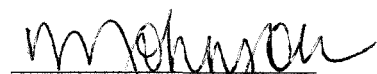
22 Copies of the foregoing mailed/delivered
this 2nd day of November, 2004 to:

23 Paul J. Roshka, Jr.
24 Alan S. Baskin
James M. McGuire
25 One Arizona Center
26 400 East Van Buren Street, Ste. 800
Phoenix, AZ 85004
27 Attorneys for Respondent
28

1 Matt Neubert, Acting Director
2 Securities Division
3 ARIZONA CORPORATION COMMISSION
4 1300 West Washington Street
5 Phoenix, AZ 85007

6 Arizona Reporting Service, Inc.
7 2627 N. Third Street, Suite Three
8 Phoenix, Arizona 85004-1103

9 By:

10 
11 Molly Johnson
12 Secretary to Marc E. Stern
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28